

66IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2006

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

WRIT PETITION NO.35386 OF 2003

The Union of India
rep. by the Secretary to
Government of India
Ministry of Personnel
Public Grievances and Pension
Department of Personnel & Training
New Delhi - 1. ... Petitioner

Vs.

1. A. Abdul Salam, I.A.S.
Joint Commissioner of Sugars,
Nandanam, Chennai 600 035.
 2. The Secretary to Government
Public (Special A) Department
Secretariat, Fort St. George
Chennai - 600 009.
 3. The Registrar
Central Administration Tribunal
Madras Bench
City Civil Court Buildings
Chennai - 600 104.
- सत्यमेव जयते Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the concerned records relating to the order dated 31.7.2001 in O.A.No.101 of 2001 and affirmed in M.A.No.116 of 2003 in R.A.No.12 of 2003 in O.A.No.101 of 2001 passed by the second respondent and to quash the same.

For Petitioner : Mr. B. Shanthakumar
Sr. Counsel for Central Govt.,

For R1 : Mr. Vijayasankar

For R2 : Mrs. Geetha, AGP.

O R D E R

(Order of the Court was made by Elipe Dharma Rao, J.)

The Government of India is the petitioner. Aggrieved of the order passed by the tribunal, which was filed against the order for refixation of the salary of the first respondent, the said O.A.No:101 of 2001 was filed. The tribunal had gone into the matter and not satisfied with the impugned order passed by the second respondent refixing his salary in the cadre of IAS non civil services is bad in law and therefore, allowed the OA and directed the writ petitioner to refer the matter to the Pay Anomalies Committee for its consideration and pass appropriate orders.

2. The facts of the case are as follows:

(a) The first respondent joined in the services of the State Government as Joint Commercial Tax Officer (Class I Post) in 1972 and subsequently promoted as Commercial Tax Officer in 1987. In March, 1997, the applicant was called for an interview for appointment to the Indian Administrative Services (IAS) by Selection and by order dated 19.5.1997 the second respondent appointed the applicant to officiate in a cadre post as Joint Commissioner of Civil Supplies and Consumer Protection. The applicant joined the post on 21.5.1997. As per order dated 30.6.1997, the Central Government appointed the applicant as a member of I.A.S. under the I.A.S.(Appointment by Selection) Regulations, 1956. His probation was also declared. By order dated 27.6.1997, the State Government allowed the applicant to draw the last pay drawn by him pending fixation of his pay by the Central Government. The applicant was allowed to draw Rs.5000/- as basic pay since he reached the maximum scale in his sale of pay Rs.3700-5000. The applicant received a total emoluments of Rs.14,425/- as pay arrears with other allowances on the date of his appointment to the cadre post. On 3.12.1997, the Central Government fixed the pay of the applicant in the scale of pay of Rs.15,100-18,300 and his pay was fixed at the minimum of the scale of Rs.15,100/- with effect from 22.5.1997. In the meanwhile, the State Government revised the pay and the pay scale in which the applicant was working i.e. Rs.3700-5000 was revised to Rs.12,000-16,500 with effect from 1.1.1996. The applicant also got the benefit of pay fixation given by the State Government. While so, as per the letter dated 25.11.1999, the applicant was informed that the Government of India is proposed to review the earlier pay fixation of the applicant in the I.A.S., consequent to the revision of pay scale of the State Government. The applicant made his representation. But by the impugned order, the applicant's pay was fixed at Rs.13,575/- in the scale of pay of Rs.10,650-15,850. Therefore, the applicant filed the O.A.,

contending that once his initial pay was fixed as scale, it is not open to the Government to review or revise the earlier order as per Rule 4(6) of the IAS (Pay) Rules, 1954. It is further contended that as per the Notification dated 22.10.1997 consequent to the implementation of the Fifth Central Pay Commission in the explanatory memorandum, it is declared by the Government that by giving retrospective effect to the implementation of the pay commission report no member of the I.A.S., is likely to be adversely affected. It is also alleged by him that if the revised pay fixation is effected, he will be put to monetary loss approximately about 15 lakhs and his pension will also be affected. Further, it is contended that his juniors in the State service are getting a higher pay and specific instances also given that M/s. K. Raju and Appavoo are now working as Joint Commissioner of Commercial Taxes in the pay scale of Rs.15,000-18,600/- whereas the applicant admittedly senior to them and has been promoted to I.A.S., is getting a lesser pay much less than his juniors.

(b) In reply to the above contentions raised by the applicant, the Government/respondent No.2 has contended that initially his pay was fixed as a member I.A.S., Rules and provisionally fixed his scale to be reviewed or revised later. After revision of the pay scales of the Officers, who are promoted from the State non civil cadre the applicant's pay was fixed provisionally and after receiving the communication from the State Government with regard to the revision of State pay scales, the impugned order was passed which is in order and in accordance with law. It is specifically contended by the petitioner in the writ petition that that the selection grade is admissible to the officers of IAS on completion of 13 years service calculated from the year of allotment, for which the applicant was even otherwise not eligible, going by his seniority fixed in the IAS. Since such a fixation was only provisional, the higher pay was allowed till the time the State pay scales were subsequently revised. When the same happened and the State pay of the applicant was revised, it became necessary to refix his IAS pay on the basis of his reckonable revised State pay, which he was found to be drawing on the dates of his officiation in an IAS cadre post and appointment in the IAS cadre. Accordingly, the present pay scale was fixed.

(c) In reply to the above said contentions, learned counsel for the respondent/applicant in paragraph-4 of the counter affidavit has relied upon certain provisions of pay fixation laid down in the IAS (Pay) Rules, 1954 and the instructions issued thereunder which would be relevant to understand the issue. The SCS and non-SCS officers appointed in the IAS get their pay fixed in the IAS pay-scales at the stage next above their State pay. While doing so, the reckonable state pay is the pay drawn by them in a substantive position. The state pay-scales for this purpose should be the pay-scales which are

either revised from the same date from when the IAS pay-scales are revised or are the first time pay revision after the date of revision of the IAS pay-scales. Such promoted officers remain on probation for a period of one year in the IAS and during the period, they are eligible for re-fixation of their IAS pay as and when any enhancement in their State Pay takes place. The applicant's pay was fixed in the IAS strictly in the light of the above provisions. When the State pay-scales were subsequently revised from 1.1.1996, it however became necessary to refix the pay of the applicant which happened to be lower than what he was granted earlier.

3. Under the IAS Pay Rules, 1954, as per Rule 4(6), the only condition in the case of fixation of pay of an officer like the first respondent not belonging to the State Civil Services on appointment to the IAS is that such officer shall not be granted higher pay than that is admissible to a direct recruit. Unfortunately, the respondent Government has not stated the pay of the direct recruit as per Rule 4(6) proviso not allowing the applicant to draw more than the direct recruit. Further, subsequently, an amendment was introduced to the Rule on 9.5.1994 providing that the pay of such promoted/selected officers would be protected upto Rs.5700/-. This amendment squarely applies to the case of the applicant as he had not exceeded Rs.5700/- as he was drawing Rs.5000/- then. Therefore, in the light of this amendment, his pay was rightly protected and pay fixed provisionally on 27.6.1997 and finally on 3.12.1997. To support his contention, he filed the amendment issued by the Government of India under the Indian Administrative Services (Pay) Rules, 1954 making amendment to Rule 1(2), G.O.Ms.No.742, dated 8.8.1995, which were given retrospective effect from 9.5.1994. The explanation given by the Government while issuing the above said amendment that the State Civil Service Officers and Non-State Civil Service Officers appointed in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and the Indian Administrative Service (Appointment by Selection Regulations, 1956 respectively, had been demanding protection of pay drawn by them in the State Governments, on their appointment in this service. Such protection was earlier available to the extent of the maximum of the Senior Time Scale of this Service and Personal Pay with the conditions that pay plus personal pay would not exceed Rs.5700/- per month and the personal pay would be absorbed in future increments/increases in pay. Accordingly an amendment was issued on consideration of their demand. The amendments were made effective from the date of their publication in the Official Gazette which was dated 9th May, 1994. As the date of effect of the said Notification is still causing hardship to the S.C.S./Non S.C.S., Officers appointed in the I.A.S., it has been decided to make these amendments notionally effective from 1.1.1986 from when the revised pay scales in respect of the All India Services came into being on the recommendations made by the Fourth Central Pay Commission,

whereas the promoted IAS Officers would have their pay refixed on this basis from 1.1.1986, and no arrears of pay on account of this amendment for the period from 1.1.1986 to 8.5.1994 would be admissible.

4. In view of the above pay protection given by the State Government in the above said amendment to the Rule ignoring the above said amendment, the officers from the accounts department addressed a letter to the Central Government, Union of India with regard to the revision of pay scales of the State officers on the basis of the above said exercise, the impugned order was passed. Therefore, the order passed by the Government of India is contravention of the amendment of pay protection given by the State Government. A letter dated 8.12.2000 was addressed by the Central Government ignoring the amendment and the Government Order passed by the State Government dated 2.1.2001. Therefore, the impugned orders of the Central Government are liable to be set aside and accordingly they are set aside. Though it was stated in so many words in the counter affidavit, the writ petitioner has not chosen to file any rejoinder of the above except to take into consideration the submissions made by the learned counsel for the first respondent/applicant. Accordingly, the writ petition is disposed of. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Public (Special A) Department
Secretariat, Fort St. George
Chennai - 600 009.

2. The Registrar
Central Administration Tribunal
Madras Bench
City Civil Court Buildings, Chennai - 600 104.

+ 1 cc to Mr. V. Vijay Shankar, Advocate in SR No.48953
+ 1 cc to Mr. B. Shanthakumar, Sr CCG in SR No. 49277
+ 1 cc to GP in SR No. 49462

SR/3.11.2006

W.P.No.35386 of 2003